

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:11cv122

PAMELA J. ADAMS,)
Plaintiff,)
vs.) ORDER OF REMAND
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)

THIS MATTER is before the Court on the Defendant's Motion for Reversal and Remand pursuant to Sentence Four of 42 U.S.C. §405(g), to which Plaintiff consents. [Doc. 4].

Sentence four of 42 U.S.C. §405(g) provides in pertinent part, "[t]he court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." The parties have moved for reversal of the decision of the Defendant and remand for further administrative proceedings.

Specifically, the Defendant acknowledges that “[r]emand is

appropriate in this case because the Appeals Council inadvertently issued a notice denying review of the Administrative Law Judge's (ALJ) Order of Dismissal. Moreover, the ALJ applied the doctrine of res judicata in dismissing the Plaintiff's request for a hearing; however, at the initial level of claims review, the state agency found that Plaintiff had submitted "new and material" evidence and that res judicata did not apply. In addition, the state agency found a more restrictive residual functional capacity than was found in the Plaintiff's prior 2005 claim." Accordingly, the parties ask that the Appeals Council remand the case to an Administrative Law Judge ("ALJ") to hold a hearing, address the findings of the state agency, take any further action needed to complete the administrative record, and issue a new decision.

Based on the representations of the parties, the Court finds that reversal and remand are appropriate. Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

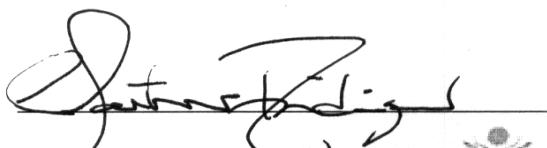
IT IS, THEREFORE, ORDERED that the parties' Consent Motion for Reversal and Remand pursuant to Sentence Four of 42 U.S.C. §405(g) [Doc. 4] is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the decision of the Commissioner of Social Security is hereby **REVERSED** and the case is **REMANDED**; and

IT IS FURTHER ORDERED that upon remand, the Appeals Council remand the case to an ALJ to hold a hearing, address the findings of the state agency, take any further action needed to complete the administrative record, and issue a new decision.

A Judgment of Remand is entered simultaneously herewith. The Clerk of Court is notified that this is a final judgment closing the case.

Signed: August 30, 2011



Martin Reidinger
United States District Judge

